IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

Banwari Lal
Vs.
Board of Revenue for Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.156/1997
UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

Date OF ORDER :: 12.04.2007

PRESENT

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr.Sudhir Sharma, for the petitioners.
Mr.S.N. Tiwari, Dy. Govt. Advocate.
Mr.Vijay Bishnoi, for the respondents.

By the Court:-

By way of filing present writ petition, the petitioner is challenging the order dated 10th December, 1984 (Annexure-1) passed by S.D.O., Nohar, order dated 25th July, 1990 (Annexre-2) passed by Revenue Appellate Authority, Sri Ganganagar whereby the appeal filed against the order of SDO, Nohar was

dismissed as well as order dated 31st July, 1996 (Annexure-3) passed by Board of Revenue, Ajmer whereby the second appeal filed by the petitioner was also dismissed.

According to the facts of the case, the petitioner has filed a suit for declaration & permanent injunction against defendant-respondent before S.D.O., Nohar. It was submitted in the suit that old khasra No.138 area 85 bighas situated in village Mukarka was in the khatedari of plaintiff's father Chhoga Ram and they are in possession of it, after colonization this land was given new chak No.9 RPM, stone No.294/391, Kila No.6-14, 17-24, stone No.293/391, Kila No.1-25, murabba No.292/391 kila No.4-6, 14-17, 24 & 25, murabba No.293/392 kila No.4/7, 14, 15 and murabba Nos.294/392 Kila No.1-4, 7-10 total area 65 bighas.

It is further submitted that he has 1/4th share in it, the revene officers out of this land recorded stone No.294/391, Kila No.6-24, murabba No.293/391 kila No.1-25 total area 41 bighas as abadi for the village, whereas this land was not given to them and prayed to declare him along with his other brother to be the khatedari tenant of it. No written statement was filed before the S.D.O., Nohar, but in reply to the application under Section 212 of the Rajasthan Tenancy Act, it was submitted that the land was

in the khata of Khinya S/o Dhonkal, which was cancelled vide order dated 20th October, 1956 by D.C.C., Nohar and the possession was taken. It is also submitted that later on the said land was declared abadi land and was being used as such. It is also submitted that plaintiff has no right with the land nor has challenged those orders, before the competent court. The application filed under Section 212 in the suit was dismissed and the suit was also dismissed on 10th December, 1984.

Against the said order of S.D.O., Nohar dated 10th December, 1984 an appeal was preferred before the Revenue Appellate Authority, Sri Ganganagar. The said appeal filed by the petitioner was dismissed vide order dated 25th July, 1990 on the ground of non-filing of the copy of the decree within limitation alongwith impugned order in appeal. Later on decree was submitted within limitation, but learned Revenue Appellate Authority was of the opinion that appeal was not accompanied by the decree which is mandatory, therefore, for this non-compliance, the appeal is dismissed. The said order was passed by the learned Revenue Appellate Authority on 25th July, 1990.

The said order passed by the Revenue Appellate Authority was challenged by way of filing second appeal before the Board of Revenue, Ajmer. The Board of Revenue, Ajmer in its

conclusion gave finding that dismissal of appeal for non-filing of the decree was not justified but the Revenue Board has decided the matter on merit also.

The petitioner is now challenging the validity of the order dated 10th December, 1984 passed by the S.D.O., Nohar and order dated 25th July, 1990 passed by the Revenue Appellate Authority, Sri Ganganagar as well as the order dated 31st July, 1996 passed by the Board of Revenue.

It is contended by learned counsel for the petitioner that the judgment given by the learned S.D.O., Nohar was erroneous because no written statement was filed by the respondents and only on the ground which is submitted in the reply on application filed under Section 212 of the Act that the said land was entered in abadi land, therefore, court had no jurisdiction to trial the suit. According to the ground taken in the petition, the dismissal of suit by the S.D.O., Nohar was erroneous because issue was to be framed whether the land is entered in the abadi area or not. Similarly it is stated in the ground No.3 that Revenue Appellate Authority has also committed an error while dismissing the appeal on the ground of non-filing of decree along with the appeal, therefore, the said judgment was challenged by way of filing second appeal to the Board of Revenue, Ajmer.

I have perused the order passed by the Board of Revenue which is impugned in this writ petition.

Upon perusal of the judgment of Board of Revenue, it is clear that although the learned Board of Revenue arrived with the finding that Revenue Appellate Authority was wrong in dismissing the appeal on the ground of non-filing of decree alongwith the matter of merit also in the merit. It is specifically taken to the account the fact that the land in question was recorded in the Revenue Board as abadi land and the land was not agricultural land.

I do not find any reason to reverse this finding because it is based on record and the original court which is S.D.O., Nohar delivered the judgment on the ground that the said land is abadi land, therefore, no suit can be entertained by the Board of Revenue. Similarly, I am also of the opinion with regard to other reasons mentioned in the judgment given by the Board of Revenue that as per order of Nayab Tehsildar, Nohar dated 23rd August, 1956 the allotment which is made in favour of Khiya Ram was recommended for cancellation to the department Colonization Commissioner, Nohar. But further recommended to cancell allotment to the Colonization Commissioner and ultimately the land alloted to one Shri Khiya Ram was cancelled

vide order dated 30th December, 1956 and no appeal was filed against that order. The learned Revenue Board while observing that all these facts were not brought to the notice by the record through written statement but brought to the notice of the court in the reply of the application filed under Section 212 of the Act. Therefore, the suit was rightly dismissed and learned S.D.O., Nohar has rightly held that he had no jurisdiction because land in question is entered in the abadi land.

I do not find any reason to interfere with the orders under challenged.

The petition is dismissed.

(GOPAL KRISHAN VYAS), J.

Ashwini/-